IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/01/2003

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

C.R.P. (PD) No. 1313 of 2002

Sivagurunathan ... Petitioner

-Vs-

1. Rajendrababu
2. Dillidurai
3. Baskaran
4. Govindapillai
5. Sankar
6. Devaki
7. Rajeswari
8. Umamaheswari ... Respondents

Revision under Section 115 of CPC against the order dated 28-02-2001 passed in I.A. No. 1097 of 2000 in O.S. No. 397 of 1995 on the file of District Munsif, Maduranthakam.

!For Petitioner : Mr. V. Perumal

^For Respondents : No appearance

:ORDER

The proposed second Plaintiff in O.S. No. 397 of 1995 is the revision petitioner herein. The Plaintiff namely Krishnaveni Ammal has filed the said suit against the respondents herein for mandatory injunction directing them to pay half of the produce from the suit property to her till her death and for other reliefs. Pending suit, Krishnaveni Ammal died. The petitioner herein has filed I.A. No. 1097 of 2000 under Order XXII Rule 3 CPC to implead him as 2nd plaintiff in the suit. After hearing both sides, the trial court dismissed the application, hence the present revision.

2. Mr. Perumal, learned counsel appearing for the petitioner submitted that Krishnaveni Ammal has bequeathed the mesne profits payable to her by the respondents till her lifetime to the petitioner herein under a 'will' dated 14-07-1994; that by virtue of the said 'will' the petitioner is entitled to mesne profits payable to Krishnaveni Ammal by the respondents from the date of the suit namely 20-11-1995; that the trial court erred in dismissing the petit ion holding that the petitioner has to seek his relief by

way fresh proceedings and not in the present suit; that the trial court erred in holding that the relief claimed by the deceased Krishnaveni Ammal extinguished after her death and prayed for setting aside the impugned order passed by the trial court.

3. Though the respondents were served notice, none appeared, either in person or through a pleader.

4. The point for consideration in this revision is as to whether the petitioner is entitled to be impleaded as 2nd Plaintiff in the suit as contemplated under Order 22 Rule 3 CPC or not?

5. Now, we look into the provisions of Order XXII Rule 3 CPC:-
"3. Procedure in case of death of one of several plaintiff or of sole plaintiff:-

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiff's alone, or a sole, plaintiff or sole surviving plaintiff dies and the right to sue survives the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff."

6. Order 22 Rule 3 contemplates a case where one of several Plaintiff or sole plaintiffs dies, the right to sue survives. The right to sue in order 22 Rule 3 means the right to obtain the relief which the deceased prayed for. In other words, accrual of right to sue means accrual of cause of action for the suit. When the relief claimed is so personal that it cannot be enjoyed after the death of the plaintiff, the right to sue does not survive. When the right to sue so survives, the suit would not abate ipso facto on the death of the plaintiff or the defendant. As to when a right to sue survives and when it does not depends upon the facts and circumstance of each case. The application of Rule 3 of Order 22 CPC depends upon the facts and circumstance of the case. In case a legal representative takes a stand that title was derived by certain documents, the suit stands on a different footing.

7. In this case, the 1st respondent is the son of the deceased Plaintiff. The other respondents herein are the children of the 1st respondent. The suit property originally owned by Rajambal Ammal, mother of the deceased Plaintiff. According to the petitioner, the said Rajambal Ammal executed a settlement deed on 01-10-1964 in favour of Krishnaveni Ammal and the first defendant and the settlement deed was acted upon by them. It is further alleged by the petitioner that while Krishnaveni Ammal was in a sound state of mind, she had executed the 'will' bequeathing all her properties in his favour.

8. It was alleged by the first defendant that under the settlement deed, the right of enjoyment alone was given to him and Krishnaveni Ammal. After their lifetime, the property devolves on the children of the first respondent. The respondents herein dispute the 'will' dated 14-07-1994.

9. The relief sought for by the deceased Plaintiff in the suit was to grant a mandatory injunction directing the respondents herein to pay one half of the produce from the suit property to her till her life time. When the petitioner has made his claim on the basis of own title derived from the 'will', the suit stands on a different footing. The petitioner not being natural heir cannot continue the suit unless he establishes his right by devolution under 'will'. That apart, the right for mesne profits sought for by Krishnaveni Ammal was a personal one and the prayer abated after her death. As such, the petitioner is not entitled to prosecute the suit.

The impugned order passed by the court below is perfectly valid, no interference of this Court is warranted. Hence, the revision is dismissed. No costs.

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Index : Yes
Internet : Yes

To
The District Munsif
District Munsif Court